O. Rationing/45

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File No.

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Subject:—

Opinions Under the

Bombay Rationing Order, 1943

(P 7/E)

O. Rationing/45

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C O N T E N T S.

Legal Department File No. 0 Rationing /1945.

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Opinions under the Bombay Rationing Order, 1943.

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2. J. No. 1882/9-3-45 — Questions (1) whether taxing of ~~deposits~~ deposits and their forefeiture in case of Authorised Retail Distributors is legal, (2) whether Govt. can legally ask for deposits in case of factories, shops and catering establishments (whether departmental inquiry and a prosecution in court of law can be done on same facts simultaneously, (4) whether departmental action can be taken on the same facts when there is an ~~acquittal~~ aquittal. 3-4

3. J. No. 8265/7-11-45 — Question whether an authorised officer would be justified in rescinding the authorisation issued under clause 3(2). 5-6

4. J. No. 8470/15-11-45 — Clause 20 Question whether an order would be necessary for the sale from Govt. godowns of rationed articles found to be ~~the~~ unfit for human consumption

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Office of the R.L.A.

Sub-clause (c) of clause 23 of the Ahmedabad Rationing Regulation, 1943, made under clause 12 of the Bombay Rationing Order, 1943, provides that no person may obtain any rationed article unless he complies with any other directions which the District Magistrate in this behalf may issue. Reading this sub-clause with the preceding sub-clauses (a) and (b) it appears that the directions to be issued should be such as would regulate the obtaining of rationed articles and not prohibit altogether the drawing of rations. The direction issued by the District Magistrate, Ahmedabad, at page 1 ante does not intend to regulate the obtaining of rationed articles but to prohibit it under certain circumstances. Although the point is not quite free from doubt it appears to be ultra vires of sub-clause (c) of clause 23 of the Ahmedabad Rationing Regulation.

Id/ 7/2

Remembrancer of Legal Affairs.

U.R. to C. of R.No. 1193 dated the 8th Feb., 1945.

SSM / 11/7/56.

Office of the R.L.A.

It is not possible for the R.L.A. to express an points which are not specifically and clearly stated by the administrative departments. (see para. 104 of the Secretariat Instructions). As a rule references on hypothetical questions are discouraged. The present reference appears to suffer from both these disabilities. The following observaitons are however made on the points considered by the Controller of Rationing in these Papers.

The question of deposits from authorised retail distributors was considered by the R.L.A. in his opinion No. 4940, dated 13-7-1944 where it was observed: "If an amount is deposited by an authorised retail distributor and a bond executed by him agreeing to the forefiture of the amount for breach of any of the stipulations of the Bond, the forfeiture of the deposit would not be governed by the provisions of section 74 of the Indian Contract Act, 1872, but if reasonable in amount would be treated as valid according to the decision in I.L.R. 29 Madras 118". Consequently the forfeiture of the deposit of an authorised retail distributor under a bond for the breach of any covenant thereof would be competent provided the amount foreited is reasonable.

There is no provision in the Bombay Rationing Order, 1943, empowering Government to demand deposits from the keepers of factory shops and catering establishments. Consequently if Government wants to exercise the same kind of control over the factory shops and catering establishments as over the authorised retail distributors it would be necessary to follow the same procedure and take deposits from them under an agreement with power to forfeit in case of a breach thereof.

¥6 It is not understood what the Control of Rationing means exactly by "d partmental inquiry." Such inquiry it is presumed may be eith r for cancelling th license or authorisation or for forreiting deposits made under an agreement. If departmental inquiry is to be held for the purpose of cancelling the license or authorisation it would be necessary to prove the breach of such licence or authorisation. On the same facts it may be also possible to launch a prosecution under the Defence of India Rules. Apparently both of these remedies are independent and the resort to one would be no bar to resort to the other. But there is a great likelihood o a conflict between the findings in both of these proceedings. It is therefore desirable to postpone departmental inquiry in cases where prosecution is proposed to be launched. If the prosecution ends in conviction there would be no difficulty in taking departmental action against the licensee. If however the prosecution ends in an acquittal departmental inquiry may be proceeded with more cautiously and unless the facts disclose a clear breach of any provision it would be inadvisable to take departmental act on.

If departmental inquiry is proposed to be taken for the purpose of forfeiting deposits made by the licensee the same caution would be necessary in cases where prosecutions are launched on the same facts. Further, forfeiture of deposits will have to be based on breach of provisions of the bond itself. Consequently the question whether there has been a breach of the bond will have to be considered independently of the result of prosecution for breach of the

~~of the bond will have to be considered independently of the result of prosecution for breach of~~ the breach of the provisions of the Defence of India Rules. But the facts on which both actions would be founded being the same, the decision of the prosecution is likely to influence the decision in the departmental inquiry held for forfeiting the deposits. Consequently if the licensee is acquitted on certain facts it might be inadvisable to found forfeiture of a deposit on the same facts.

The Circular No. C.R.4/Deposits, dated 2nd September 1944, Slip A of the file of the Office of the Controller of Rationing seems to be based on the assumption that Government has power to call on licensees to furnish deposits; but as pointed out above Government has no such power. The Circular therefore is based on a misconception of law and requires to be revised.

P.N.M.

8/3/45

Remembrancer of Legal Affairs.

U.R. to C. of R. No. 1832, dated the 9th March, 1945.

SSM / 11/7/56.

It is true that sub-clause (2-) of clause 3 of the Bombay Rationin Order, 1943, empowers Government to rescind after making such inquiry as may be deemed necessary, the authorisation issued under this clause, but though that power is apparently wide, it is controlled by the preceding sub-clause (1) which provides.

"With a view to controlling the distribution of any rationed article the Provincial Government etc., may issue an authorisation to any person being a wholesale dealer, retail dealer or having charge of an establishment to supply any rationed article in such area in accordance with the provisions prescribed by or under this Order, and such authorisation shall specify the rationed article in respect of which it is issued."

"The intent of the Legislature in making these provisions as indicated by the opening words of clauses 3(1) and 9(1) and 'with a view to controlling the distribution of any rationed article', appears to be to provide for power to penalise the breach of any regulation or rule relating to the control of rationed articles (see R.L.A's opinion No. 7076, dated 2 11-10-1944). Consequently an authorication issued under clause 3, can be cancelled for the breach of any provisions of the Order or Regulation thereunder and not of any independent Order. The Order of the Commissioner of Police No. 14024/23-C, dated 12-9-1944, prohibiting the sale or supply of any article of food or drink for consumption between the hours of 11 P.M. and 5 A.M. at any place of public entertainment is an independent Order issued under rule 81(2) of the Defence of India Rules and

~~Rules and~~ the breach of that Order involved breach of the Bombay Rationing Order and the Regulation made thereunder. It would not, therefore, be legal to rescind for the breach of Order of the Commissioner of Police, No. 4034/123-C, dated 12-9-1944, the authorisation issued under clause 3 of the Bombay Rationing Order, to Alisab Mohomedbhia, the proprietor of 'Brham Restraurant at Sirkaji Street, Bombay. The view at 'A' on page 10 ante is not correct.

Jd/ 6/11

Remembrancer of Legal Affairs.

U.O. to the Controller of Rationing, No. 8855
dated the 7th Nov., 1945.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether an order under clause 20n of the Bombay Rationing Order, 1943, would be necessary for the sale from Government godowns of rationed articles found to be unfit for human consumption.

2. Clause 20 of the Bombay Rationing Order, 1943, inter alia provides that notwithstanding any provision of this Order the distribution of rationed articles otherwise than on a ration document whether or not for house-hold consumption or establishment consumption or for the purpose of an establishment other than establishment consumption and subject to such conditions as may be prescribed, may be authorised by the Controller of Rationing, Bombay, in the City of Bombay and the Bombay Suburban District and the District Magistrate elsewhere in respect of an rationed article and under the control of the Crown is an authorised whole-sale distributor (see clause 2(2) of the Order) and he cannot supply any rationed article to any person other than an authorised retail distributor or an authorised establishment and except under this Order (see clause 5 of the Order). Under clause 38 of the City of Bombay Rationing Regulation, 1943, a Government godown-keeper can supply rationed articles on the ration authority. The sale from a Government godown of rationed articles unfit for human consumption being otherwise than on a ration authorityan Order under clause 20 ofthe BombayRationing Order would be necessary.

declared by him to be unfit for human consumption. A person in charge of a godown appertaining to a rationed article and in accordance with the provisions prescribed by or under

Jd/12/11

Remembrancer of Legal Affairs.

U.R. to P.O. No. 8470 dated the 15th Nov., 1945.